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DE RUEHSA #4230 3550721  
ZNR UUUUU ZZH  
R 210721Z DEC 07  
FM AMEMBASSY PRETORIA  
TO RUEHC/SECSTATE WASHDC 3007  
INFO RUEHTN/AMCONSUL CAPE TOWN 5162  
RUEH DU/AMCONSUL DURBAN 9446  
RUEHJO/AMCONSUL JOHANNESBURG 7794  
RUEHRC/DEPT OF AGRICULTURE WASHDC

UNCLAS PRETORIA 004230

SIPDIS

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DEPT FOR AF/S; AF/EPS; EB/TPP  
USDOC FOR JDIEMOND  
USTR FOR PCOLEMAN  
TREASURY FOR TRAND  
USDA/FAS FOR OCRA/FERUS; ONA/MARKLEY

E.O. 12958: N/A

TAGS: [ETRD](#) [ECON](#) [USTR](#) [SF](#)

SUBJECT: SOUTH AFRICA MAY TERMINATE ANTI-DUMPING DUTIES

11. Summary. South Africa's International Trade Administration Commission (ITAC) has proposed a recommendation to terminate anti-dumping duties on Lysine, Acetaminophenol, suspension PVC, and chicken meat portions. ITAC's recommendation will be based on a recent South Africa Supreme Court of Appeal decision, which determined that calculation of ITAC's five-year limit for initiating sunset reviews needed to be based on the date the duties were in effect, not the date the notice of duties was issued. Based on the court's determination, several of ITAC's sunset reviews were initiated after the five-year deadline. End Summary.

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Rescission of Lysine Investigation  
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12. ITAC has proposed in a December 14 notice to rescind its decision to initiate a sunset review investigation and to terminate anti-dumping duties on lysine originating in or imported from the U.S. retrospective to July 30, 2006. ITAC is basing its recommendations on a recent South Africa Supreme Court of Appeal decision, "Progress Office Machines versus ITAC." The court determined that sunset reviews must be initiated five years from the "imposition date" of the anti-dumping duty, which is the date the South African Revenue Service amendment was to have effect. Based on the effective date for lysine anti-dumping duties, the sunset review should have been initiated by July 30, 2006; however, it was not initiated until January 12, 2007.

13. According to ITAC Senior Manager of Legal Services Nikki Kruger, ITAC opted to recommend rescission of the investigation as ITAC is procedurally authorized to rescind an on-going investigation, which will also result in termination of the duties as though the investigation had never been initiated. Lysine was the only product still under investigation at the time the court issued its ruling. If ITAC's recommendation becomes a final decision, affected importers will be able to obtain a refund of all duties paid after July 30, 2006.

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Recommendation to Terminate Anti-Dumping Duties  
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14. Kruger provided Agricultural Counselor and Trade and Investment Officer with a courtesy unofficial copy of ITAC's notice recommending termination of anti-dumping duties on Acetaminophenol, suspension PVC, and chicken meat portions.

Based on the fact that the sunset reviews of Acetaminophenol and chicken meat portions were not initiated per the court's ruling in the "Progress Office Machines" case, ITAC is providing notice of its recommendation that anti-dumping duties in these cases be terminated with effect from September 26, 2007 (the date the court issued its ruling.) According to Kruger, a sunset review of suspension PVC was never initiated and the anti-dumping duties lapsed in October. However, ITAC included this product in its notice so that the earlier September 26 effective date would apply. The official notice is to be released on December 20 with comments due to ITAC by January 31, 2008. Kruger stated that she expects that a final decision following receipt of comments will be released in February or early March 2008 at the latest.

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Comment  
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15. ITAC's implementation of the court ruling to terminate anti-dumping duties could be a major boon for those U.S. Qanti-dumping duties could be a major boon for those U.S. exporters who have been blocked from these markets for years. Although ITAC will await comment from industry before making its final recommendation to the Department of Trade and Industry Minister, given the breadth and application of the court ruling, local industry will likely find it difficult to argue against termination of the duties. In addition, these industries will have an uphill battle to initiate a new investigation since evidence of damages and dumping practices will be difficult to prove when they have been operating in a protected market.  
BOST